

# Fond du Lac Band of Lake Superior Chippewa

## Reservation Business Committee

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May 17, 2019

By U.S. Mail



Chairman  
**Kevin R. Dupuis, Sr.**

Secretary/Treasurer  
**Ferdinand Martineau, Jr.**

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**Wally J. Dupuis**

Dist. II Representative  
**Bruce M. Savage**

Dist. III Representative  
**Roger M. Smith, Sr.**

Executive Director,  
Tribal Programs  
**Miyah M. Danielson**

Ms. Jane Nishida  
Principal Deputy Assistant Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, D.C. 20460

Re: EPA Comments During the NPDES Permitting Process for PolyMet  
Mining Inc.'s NorthMet Project.

Dear Principal Deputy Nishida:

I write to follow-up on our meeting on May 15, 2019 regarding the EPA's role during the state NPDES permitting process for the NorthMet Project. It was unfortunate to hear that EPA is not willing to share with the Fond du Lac Band of Lake Superior Chippewa (the "Band") any of its input into the state NPDES process. This is particularly disappointing because the EPA raised concerns regarding the Band's water quality during the permitting process with the Minnesota Pollution Control Agency ("MPCA").

We understand that the EPA is in litigation with an environmental group over that group's FOIA request for certain comments and documents that Region V prepared and shared with the MPCA. However, there is no statutory or regulatory requirement that prevents the EPA from voluntarily sharing with the Band or the general public its role and any comments that were shared with MPCA regarding the NorthMet NPDES permit.



During a state NPDES permitting process, EPA's functions as a regulatory oversight agency with the responsibility to ensure that a state NPDES permit complies with the Clean Water Act and protects public health and the environment from pollution and waste. As such, EPA is responsible for reviewing and providing comments and concerns on draft NPDES permits proposed to be issued by a state agency. Moreover, the EPA has a unique trust responsibility to the Band to protect its rights and water resources. To the extent that EPA discussed with MPCA any comments or concerns relating to the Band, the EPA should have also communicated with the Band and sought the Band's input. The Band and the public are entitled to know what comments and concerns EPA provides to a state agency on a draft NPDES permit during the state process.

Although this information was requested verbally at our meeting, on behalf of the Band, I am formally requesting copies of:

- Any and all EPA (headquarters and/or Region V) communications in any form (e.g., email, notes, facsimile, mail), to, from or between MPCA, PolyMet or any other third party, including any state or federal agency, and any papers, notes, documents and/or written comments together with any attachments in the EPA's possession (headquarters and Region V) that relate to MPCA's draft and/or pre-proposed NPDES permit or any version thereof provided to EPA prior to December 20, 2018.
- In addition, the Band requests any and all EPA communications (headquarters and/or Region V) to, from or between MPCA, PolyMet or any other third party, including any state or federal agency, as well as any and any papers, notes, documents and/or written comments together with any attachments in the EPA's possession that relate to the MPCA's proposed NPDES permit transmitted to the EPA (headquarters and/or Region V) by MPCA on December 4, 2018 or any version provided to EPA thereafter.

The Band hereby requests expedited processing under 40 C.F.R. § 2.104(e), given a June 26, 2019 litigation deadline involving the Band's appeal of the NPDES permit in the Minnesota Court of Appeals. The Band must be able to fully brief the Minnesota Court of Appeals on all

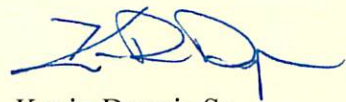
Ms. Jane Nishida  
Re: EPA Role in PolyMet Mine Permitting  
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legal and factual issues involved in its appeal which relate to the EPA's role during the permitting process as well as comments or concerns shared by EPA with MPCA.

In addition, the Band requests a fees waiver under 40 C.F.R. § 2.107(l), because disclosure of the requested information is in the public interest and is likely to contribute significantly to public understanding of the operations and activities of the EPA during the state NPDES permitting process. This request is not in the commercial interest of the Band.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KD', with a long horizontal stroke extending to the right.

Kevin Dupuis Sr.  
Chairman

cc: Betty McCollum, Chair of the House Appropriations Subcommittee on Interior,  
Environment & Related Agencies